

GRANTED ISSUES

NOTE: THE WORDING OF THE ISSUES IS TAKEN VERBATIM FROM THE PARTIES' PETITIONS FOR DISCRETIONARY REVIEW.

ISSUES GRANTED MAY 25, 2016

PDR NO.	NAME	COUNTY	OFFENSE
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16-0170	SALINAS, ORLANDO	HARRIS	INJURY TO AN ELDERLY PERSON
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1. The Fourteenth Court of Appeals' erred when it held that a court cost for "comprehensive rehabilitation" is expended for a "legitimate criminal justice purpose." The Court of Appeals failed to explain how this "relates to the administration of our criminal justice system." Is this opinion in conflict with *Peraza v. State*?
2. The Fourteenth Court of Appeals' erred when it held that a court cost labeled "abused children's counseling" is a constitutional court cost. The Court of Appeals failed to explain how this cost is "expended" for a "legitimate criminal justice purpose" when the opinion states the money is not statutorily utilized for that purpose. Is this opinion in conflict with *Peraza v. State*?

16-0197	GUTIERREZ, RENE	NUECES	AGGRAVATED ASSAULT HARASSMENT OF PUBLIC SERVANT
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Did the court of appeals properly apply either prong of *Strickland v. Washington* when it affirmed a new trial based on defense counsel's allegedly deficient advice to proceed with an 11-member jury?

16-0215	QUEEMAN, ROBERT ALAN	KINNEY	CRIMINALLY NEGLIGENT HOMICIDE
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1. Is failing to maintain a safe speed and keep a proper distance the sort of "unexplained failure" that this Court suggested in *Tello v. State*, 180 S.W.3d 150 (Tex. Crim. App. 2005), would be unworthy of criminal sanction?
2. Did the court of appeals ignore basic rules of sufficiency review when it disregarded evidence that supported the verdict and drew inferences contrary to those presumably drawn by the jury?

16-0227	GAMINO, CESAR ALEJANDRO	TARRANT	AGGRAVATED ASSAULT
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1. Did the court of appeals err in finding that Respondent admitted to threatening his victim, and thereby admitted to committing aggravated assault with a deadly weapon, by testifying he held a gun at his side with the barrel pointed at the ground?
2. Did the court of appeals err by relying on law not applicable to this case in order to reach its holding?
3. Did the court of appeals err when it cited a case as support of an application of law that the case actually held to be error?

16-0295	THOMAS, CODY LANG	HOPKINS	THEFT
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What is the proper remedy when the defendant and the State "charge bargain" for an open plea of guilty to a lesser-included offense and the trial judge imposes an illegal sentence?

ALPHABETICAL LISTING WITHOUT ISSUES

<u>PDR NO.</u>	<u>NAME</u>	<u>DATE GRANTED</u>
15-0967	ACOSTA, GENARO GALVAN, JR.	02/24/16
15-0290	ANTHONY, JOHN DENNIS CLAYTON	05/20/15
15-1648/49	ARTEAGA, ROBERT MICHAEL	04/27/16
15-1409	ASBERRY, DAMON LAVELLE	03/09/16
15-1087	BAILEY, LAJUAN CECILE	01/13/16
15-1358-61	BAUMGART, ERIC L.	03/09/16
16-0208	BOWMAN, RICHARD MARK	04/06/16
15-1453	BULLOCK, RICHARD HENRY	03/02/16
15-0992	BURKS, ANTWAIN	11/25/15
15-1480	BYRAM, CAMERON	03/02/16
15-0213	BYRD, THOMAS LEON	05/20/15
14-1341	CARY, STACY STINE	03/25/15
15-0445	CARY, DAVID FREDERICK	07/01/15
15-0681	CLEMENT, DAVID LEE, JR.	09/16/15
15-1549	COPELAND, SHIRLEY	02/24/16
15-1652	CORTEZ, JOSE LUIS	05/18/16
15-1283	CRAWFORD, MILTON RAY	01/27/16
14-1514	DABNEY, RONNIE LEON	03/04/15
15-1484	DEEN, PHILLIP DEVON	03/02/16
15-1238	DRUMMOND, JIMMY EARL	01/27/16
15-0429	DURAN, FRANCISCO	07/01/15
15-1369	FEBUS, ALBERT JUNIOR	02/03/16
15-1189	FLORES, MAYRA	01/27/16
15-0212	FURR, CHRIS	06/10/15
16-0227	GAMINO, CESAR ALEJANDRO	05/25/16
16-0197	GUTIERREZ, RENE	05/25/16
16-0171	GREEN, CLIFFORD WAYNE	05/04/16
15-0887	HANKSTON, GAREIC JERARD	02/03/16
15-0257	HENLEY, GREGORY SHAWN	06/17/15
15-0511	HENRY, ALVIN PETER, JR.	10/07/15
15-0019-22	HILL, ALBERT G., III	06/10/15
15-0469-72	ISELL, JOHN B.	09/16/15
15-0832	JENKINS, JAMES ALAN	09/16/15
15-1566	KNELSEN, ANNA	03/02/16
16-0196	LAKE, RODNEY DIMITRIUS	05/18/16
15-1544	LARUE, JOE EDWARD	04/13/16
15-0984	LONG, WENDEE	11/04/15
15-1337	MARTINEZ, ROGER ANTHONY	02/24/16
15-1641	McCLINTOCK, BRADLEY RAY	04/27/16
15-1054/5	METTS, ANTHONY AUSTIN	02/03/16
15-0847/8	MILES, KOJUAN J.	12/09/15
15-0891	MILLER, ARTHUR FRANKLIN, JR.	01/13/16
14-1634	MOORE, AARON JACOB	04/22/15
15-0758	MORGAN, DEWAN	09/16/15
16-0061	O'BRIEN, KELVIN LYNN	05/04/16
15-1682	PARKER, DARRELL WAYNE	05/04/16
15-1671	PENRIGHT, CARLTON CHARLES	04/27/16
15-1100	PROENZA, ABRAHAM JACOB	01/13/16
16-0215	QUEEMAN, ROBERT ALAN	05/25/16
15-1661	RITZ, ROBERT FRANCIS	04/27/16
15-0974	ROBINSON, OLIN ANTHONY	11/04/15
15-1391	RODRIGUEZ, MIKENZIE RENEE	02/24/16
15-1455	ROY, KELVIN LEE	02/24/16

15-1362	RUIZ, JOSE	03/02/16
16-0170	SALINAS, ORLANDO	05/25/16
15-0372	SANCHEZ, LUIS	07/01/15
15-0526	SCHUNIOR, VICTOR MANUEL, JR.	09/16/15
15-1639	SHIMKO, JOSEPH TIMOTHY	04/13/16
15-0597	SHORTT, BERNARD WINFIELD	09/16/15
14-1615	SMITH, WILLIAM aka BILL	02/11/15
15-0122	STEVENSON, ERIC DWAYNE	04/29/15
15-1051	SUTTON, CHRISTOPHER LEE	01/27/16
15-0730	TATE, DALLAS CARL	10/14/15
16-0295	THOMAS, CODY LANG	05/25/16
15-1086	THOMAS, JEREMY	01/27/16
15-0483	TOTTEN, RUBEN	08/26/15
15-0659	WAGNER, PAUL HENRI	11/11/15
14-1429	WALKER, KENNETH NEAL	10/14/15
14-1430	WALKER, SHELLEY	10/14/15
15-1596	WHITE, WILLIAM DEWAYNE	03/23/16
15-1124	WILLIAMS, JAMES EARL	02/10/16
15-0292	WOLFE, JENNIFER BANNER	09/16/15
15-1137	WRIGHT, SIR MELVIN, JR.	01/27/16
15-1317	ZUNIGA, MARY	01/27/16

NUMERICAL LISTING WITH ISSUES GRANTED

- 14-1341** **CARY, STACY STINE** **03/25/15**
APPELLANT'S **COLLIN** **BRIBERY; ENGAGING IN**
ORGANIZED CRIMINAL
ACTIVITY; MONEY LAUNDERING
1. The State Affirmatively Proved Ms. Cary's Innocence By Proving That The Alleged Bribes Were "Political Contributions."
 2. The Evidence Was Insufficient To Show The Requisite Consideration To Support The Bribery Convictions.
 3. The Evidence Was Insufficient To Show That Appellant Had The Requisite Intent To Commit Bribery.
 4. The Evidence Was Insufficient To Support Ms. Cary's Conviction For Engaging In Organized Criminal Activity And Money Laundering.
- 14-1429** **WALKER, KENNETH NEAL** **10/14/15**
APPELLANT'S **SMITH** **INJURY TO A CHILD**
1. The Court of Appeals erred in finding legally sufficient evidence in this case, and allows this Court to reexamine the issue of factually sufficient evidence from *Brooks v. State*, 323 S.W.3d 893 (Tex. Crim. App. 2010).
 2. The Court of Appeals erred in allowing a speculative verdict to stand in contrast to this Court's instructions.
- 14-1430** **WALKER, SHELLEY** **10/14/15**
APPELLANT'S **SMITH** **INJURY TO A CHILD**
1. The Court of Appeals erred in finding legally sufficient evidence in this case, and allows this Court to reexamine the issue of factually sufficient evidence from *Brooks v. State*, 323 S.W.3d 893 (Tex. Crim. App. 2010).
 2. The Court of Appeals erred in allowing a speculative verdict to stand in contrast to this Court's instructions.
- 14-1514** **DABNEY, RONNIE LEON** **03/04/15**
STATE'S **WICHITA** **MANUFACTURE OF A**
CONTROLLED SUBSTANCE
1. Did the Memorandum Opinion incorrectly add a notice requirement for rebuttal evidence that the State used to rebut Appellant's defensive theory after Appellant's counsel opened the door to such evidence in voir dire and in opening statement?
 2. Did the Memorandum Opinion ignore the Court of Criminal Appeals' directive that a trial judge is afforded almost absolute deference in determining whether a prosecutor acted willfully and thereby improperly substitute its judgment for the trial judge's in finding the prosecutor was engaging in gamesmanship instead of legitimately rebutting a defensive theory?
 3. Did the Memorandum Opinion, in its harm analysis, improperly ignore the overwhelming evidence of Appellant's guilt, including the fact that he absconded during trial and was absent for closing arguments at guilt/innocence?
- 14-1615** **SMITH, WILLIAM aka BILL** **02/11/15**
STATE'S **NUECES** **DRIVING WHILE INTOXICATED**
1. Whether the implied consent and mandatory blood draw provisions of the Texas Transportation Code are a constitutionally valid alternative to the warrant requirement.
 2. Whether the defendant preserves his Fourth Amendment objection to blood evidence when he fails to object to testimony concerning the results of testing done on that blood and only later objects to admission of the blood sample itself.
- 14-1634** **MOORE, AARON JACOB** **04/22/15**
STATE'S **FORT BEND** **AGGRAVATED SEXUAL**
ASSAULT
2. Does the court of appeals's construction of "the state" in Section 54.02(j)(4)(A), Family Code require dismissal of a case with prejudice without consideration of the factors for oppressive delay in violation of the separation of powers doctrine?
- 15-0019** **HILL, ALBERT G., III** **06/10/15**
15-0020
15-0021
15-0022
APPELLANT'S **DALLAS** **MAKING FALSE STATEMENT**
TO OBTAIN PROPERTY OR

**CREDIT; SECURING
EXECUTION OF A DOCUMENT
BY DECEPTION**

To establish a prima facie case of selective prosecution in violation of the Fifth and Fourteenth Amendments, and to obtain a hearing under the "presumption of prosecutorial vindictiveness" method, a defendant must provide "some evidence" that shows: (1) the government singled out the defendant for prosecution and has not proceeded against others similarly situated based on the type of conduct for which the defendant is charged; and (2) the government's discriminatory selection is invidious. Once the defendant makes this showing, the burden shifts to the State to justify the discriminatory treatment.

Appellee asks this Court to clarify what constitutes "some evidence" and find that so long as a defendant attaches a proffer of evidence to a motion to dismiss due to prosecutorial misconduct that the trial court in its discretion determines to be a colorable claim of a constitutional violation, the defendant has attached "some evidence," and a trial court should be permitted to conduct a hearing on the motion to dismiss.

Appellee not only attached "some evidence" showing a constitutional violation, but in fact attached "exceptionally clear evidence." As a result, the Court of Appeals erred when it: (1) sustained the State's second issue and concluded that Appellee "did not make the proper showing sufficient to establish a prima facie case..." of the fact that the former elected district attorney of Dallas County engaged in prosecutorial misconduct by allowing himself to be corruptly influenced by Blue in return for indicting Appellee; (2) found that the trial court erred in conducting a hearing on Appellee's motion to dismiss based upon prosecutorial misconduct; (3) vacated the trial court's Order Granting Motion to Dismiss; and (4) remanded the case to the trial court to reinstate the indictments against Appellee.

**15-0122 STEVENSON, ERIC DWAYNE
APPELLANT'S TARRANT**

**04/29/15
VIOLATING CIVIL
COMMITMENT
REQUIREMENT FOR
SEXUALLY VIOLENT
PREDATOR**

1. The convictions on Count I, Count II, and Count III are for the same offense for double jeopardy purposes.
2. The trial court had no jurisdiction in this case because the prior jurisdictional judgment was on appeal and was, therefore, not a final judgment.
3. The trial court erred by denying Appellant's motion to quash the indictment.
4. The trial court erred by denying Appellant's motion for directed verdict.
5. The trial court erred by sustaining the State's relevance objection to Appellant's proffered evidence that the commitment order was on appeal.

**15-0212 FURR, CHRIS
APPELLANT'S NUECES**

**06/10/15
POSSESSION OF
CONTROLLED SUBSTANCE**

Whether the Court of Appeals erred in holding that, under its view of *Florida v. J.L.*, 529 U.S. 266 (2000), an anonymous tip that a unidentified pedestrian is doing drugs near a homeless shelter, without more, is sufficient to justify a police officer's stop and frisk of a pedestrian the police find near that location?

**15-0213 BYRD, THOMAS LEON
APPELLANT'S McLENNAN**

**05/20/15
POSSESSION OF CONTROLLED
SUBSTANCE;
EVADING ARREST OR
DETENTION**

2. Whether a trial court may order a sentence to run consecutively with a future parole revocation.

**15-0257 HENLEY, GREGORY SHAWN
STATE'S TARRANT**

**06/17/15
ASSAULT- FAMILY VIOLENCE**

Is a person justified in using force against another to prevent an absent third party from possibly using unlawful force in the future?

**15-0290 ANTHONY, JOHN DENNIS CLAYTON
STATE'S BAILEY**

**05/20/15
AGGRAVATED SEXUAL
ASSAULT**

- 15-0292 WOLFE, JENNIFER BANNER 09/16/15**
APPELLANT'S TARRANT INJURY TO A CHILD

- 15-0372 SANCHEZ, LUIS 07/01/15**
APPELLANT'S ECTOR ASSAULT- FAMILY VIOLENCE

- | | | |
|--------------------|-------------------------|---------------------------------|
| 15-0429 | DURAN, FRANCISCO | 07/01/15 |
| APPELLANT'S | CAMERON | BURGLARY OF A HABITATION |

15-0445 STATE'S	CARY, DAVID FREDERICK COLLIN	07/01/15 BRIBERY, MONEY LAUNDERING, ENGAGING IN ORGANIZED CRIMINAL ACTIVITY
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15-0469	ISBELL, JOHN B.	09/16/15
15-0470		
15-0471		
15-0472		
STATE'S	TARRANT	EVADING ARREST OR DETENTION, ASSAULT (2 CTS), DEADLY CONDUCT

- | | | |
|----------------|----------------------|-----------------------------|
| 15-0483 | TOTTEN, RUBEN | 08/26/15 |
| STATE'S | HARRIS | POSSESSION OF A |
| | | CONTROLLED SUBSTANCE |

1. This case should be remanded because an error in the record invalidates the basis for the appeal.
2. Is the possibility that an officer detained the wrong vehicle, without more, determinative of the lawfulness of a detention such that an article 38.23 instruction is required?

3. Is an appellant who identifies no disputed fact issue at trial but raises multiple issues on appeal entitled to the "some harm" standard for preserved charge error?
4. Should the harm analysis for the failure to give an article 38.23 instruction assume the jury would have found in the defendant's favor, or is that the point of the analysis?

**15-0511 HENRY, ALVIN PETER, JR.
APPELLANT'S LAMAR**

**10/07/15
EVADING ARREST**

3. When the State failed to properly link Petitioner to the enhancement paragraphs, did the Sixth District Court of Appeals unreasonably hold that Petitioner and Coleman's testimony (showing that Petitioner has been to prison multiple times) is sufficient to uphold the prior enhancement convictions, and is this ruling in conflict with *Prihada v. State* [sic]?

**15-0526 SCHUNIOR, VICTOR MANUEL, JR.
STATE'S WEBB**

**09/16/15
AGGRAVATED ASSAULT**

1. Is the limitations period for aggravated assault governed by Article 12.01(7) rather than Article 12.03(d) of the Code of Criminal Procedure?
2. If the limitations period for aggravated assault is governed by Article 12.03(d), does the lesser-included offense with the greater limitations period control when the lesser-included offenses of the aggravated assault include both misdemeanor assault and a felony?

**15-0597 SHORTT, BERNARD WINFIELD
APPELLANT'S DALLAS**

**09/16/15
BURGLARY OF A HABITATION**

The Court of Appeals erred when it dismissed Appellant's appeal for want of jurisdiction because: (1) Texas Code of Criminal Procedure Article 44.02 allows appeals from a criminal action, and under this Court's holding in *Bautsch v. Galveston*, 11 S.W. 414 (Tex. Ct. App. 1889), a hearing on a motion for shock probation is a criminal action; and (2) the issue appealed was an unconstitutional imposition of restitution, and not the granting of shock probation itself.

**15-0659 WAGNER, PAUL HENRI
APPELLANT'S DALLAS**

**11/11/15
VIOLATING A PROTECTIVE
ORDER**

1. What is the correct definition of the phrase "communicating . . . in a . . . harassing manner" as used in the statute for protective orders in family violence cases, and, as applied in this case, did it penalize protected speech in violation of Petitioner's First Amendment rights? [Tex. Pen. Code § 25.07(A)(1)(A)]
2. Whether this is a "content-based" First Amendment case and ought to have been decided by a different standard of review, "strict scrutiny" as enunciated in the case of *Ex parte Lo*.
3. If strict scrutiny is the proper standard of review, whether the correct standard of review can be waived.

**15-0681 CLEMENT, DAVID LEE, JR.
STATE'S WISE**

**09/16/15
DRIVING WHILE INTOXICATED**

1. Does a suppression motion's mere citation to the Fourth Amendment and probable cause, or a belated closing argument that anything after the "stop" be suppressed due to lack of probable cause for "arrest," preserve an illegal arrest claim?
2. Did the lower court err by basing its illegal arrest holding on the officer's subjective reasoning rather than the objective facts he articulated that routinely support a DWI arrest?

**15-0730 TATE, DALLAS CARL
STATE'S MONTAGUE**

**10/14/15
POSSESSION OF CONTROLLED
SUBSTANCE**

Did the court of appeals ignore multitude rules of sufficiency review and substitute its judgment for the jury's when it held there was insufficient evidence connecting appellant to the contraband found in plain view in the center console of a car that he owned and was driving?

**15-0758 MORGAN, DEWAN
STATE'S DENTON**

**09/16/15
BURGLARY OF A HABITATION**

1. In burglary of habitation cases, must trial and appellate courts utilize property law to determine who qualifies as the "owner" of a habitation as defined by the Penal Code?
2. To qualify as "entry without the effective consent of the owner" how much time must elapse after a victim revokes consent for her live-in boyfriend to enter her home for his forcible entry to be deemed a burglary?

09/16/15
ILLEGAL VOTING

- ## COMPELLING PROSTITUTION SEXUAL ASSAULT OF A CHILD

MURDER

- AGGRAVATED SEXUAL
ASSAULT,
INDECENCY WITH A CHILD**

POSSESSION OF MARIJUANA

ASSAULT

- ## UNLAWFUL INTERCEPTION OF ORAL COMMUNICATION

- ## TAMPERING WITH EVIDENCE

Petitioner avers that the Honorable Court of Appeals for the Fourteenth District erred in holding that the Trial Court submitted sufficient evidence of Tampering with Evidence when in fact the evidence did not support the finding that Petitioner "Tampered with Evidence" at all; more specifically, a "CORPSE".

15-1051	SUTTON, CHRISTOPHER LEE	01/27/16
STATE'S	MONTGOMERY	IMPROPER RELATIONSHIP
		BETWEEN EDUCATOR
		AND STUDENT

1. The Ninth Court of Appeals, in a 2-1 decision, incorrectly interpreted section 21.12(a) of the Penal Code to require the accused to be an official employee of a particular school, rather than the school district, to be considered an "employee of a public or private primary or secondary school."

2. The lower court abandoned the correct standard of review in holding that the jury could not reasonably infer the appellant worked at a particular school where the evidence showed he was required to supervise police activities at that school and he was known to have been physically present on campus while exercising his employment duties.

15-1054	METTS, ANTHONY AUSTIN	02/03/16
15-1055		
APPELLANT'S	MIDLAND	SEXUAL ASSAULT

The Eleventh Court of Appeals erred in holding that a district judge who presided over a probation revocation proceeding, adjudicated guilt, and assessed a prison sentence was not constitutionally and statutorily disqualified even though she previously represented the State in the same case by waiving the State's right to a jury trial when the defendant accepted a plea bargain.

15-1086	THOMAS, JEREMY	01/27/16
APPELLANT'S	HARRIS	MURDER

The First Court of Appeals erred by holding that erroneously omitting testimony from a jury's request for read-back would only be harmful if the excluded portion "contradicted" the selected excerpt.

15-1087	BAILEY, LAJUAN CECILE	01/13/16
APPELLANT'S	HARRIS	FAILURE TO APPEAR

1. The attorney-client privilege belongs to the client and may not be waived without the client's consent. Appellant expressly waived attorney-client privilege but limited the waiver to one extraneous offense. Trial counsel questioned Appellant's previous counsel regarding privileged communications concerning a second extraneous offense without Appellant's consent.

2. Did the Court of Appeals err in determining trial counsel's disclosure was not ineffective assistance of counsel but instead an "implied waiver?"

3. Does implied waiver under the "offensive use" doctrine apply to the general defense of reasonable excuse provided for in Tex. Pen. Code § 38.10?

4. Can implied waiver under Tex. R. Evid. 511 trump Appellant's expressed and specific limitation on the waiver of her attorney-client privilege?

5. Did the Court of Appeals improperly shift the burden to Appellant to prove she did not waive her attorney-client privilege?

15-1100	PROENZA, ABRAHAM JACOB	01/13/16
STATE'S	CAMERON	INJURY TO A CHILD

1. Is there a common-law "fundamental error" exception to preservation that exists outside of the framework of *Marin v. State*, 851 S.W.2d 275 (Tex. Crim. App. 1993)?

2. Is a complaint about a judge's comment on the evidence forfeited if not raised at trial?

3. The trial judge's exchange with a witness neither tainted the defendant's presumption of innocence nor vitiated the jury's impartiality, and it was harmless under any standard.

15-1124	WILLIAMS, JAMES EARL	02/10/16
APPELLANT'S	McLENNAN	MURDER

Whether Appellant is entitled to dismissal of his indictment in 2012-623-C2, which alleges an offense date of June 12, 1998, on the ground that he is entitled to specific performance of a plea agreement entered into in 2002 pursuant to which the State agreed to refuse any other unfilled case of which they had notice.

15-1137 WRIGHT, SIR MELVIN, JR.
APPELLANT'S DALLAS

01/27/16
FAILURE TO REGISTER
AS SEX OFFENDER

Whether the Court of Appeals incorrectly applied the habeas harmless error analysis in *Ex parte Parrott* and *Ex parte Rich* to Appellant's case on direct appeal.

15-1189 FLORES, MAYRA
APPELLANT'S HARRIS

01/27/16
MURDER

1. The Court of Appeals erred in ruling that the audio recording of Mayra's custodial interrogation was admissible notwithstanding the fact that the recording device used was not capable of making an accurate recording.
2. The Court of Appeals applied the wrong standard in holding that the recording equipment's failure to record twenty minutes of Mayra's custodial interrogation did not amount to an alteration that rendered the recording unreliable and untrustworthy.
3. The Court of Appeals misapplied this Court's holding in *Weatherred* because the audio tape failed to meet the requirements of section three of art. 38.22 and the trial court knew that before its ruling to allow the audio recording into evidence.

15-1238 DRUMMOND, JIMMY EARL
STATE'S HARRIS

01/27/16
OFFICIAL OPPRESSION

The court of appeals erred in holding that the running of the statute of limitations was not tolled by the filing of the initial complaint against the appellee when the clear language of the controlling statute states that the filing of a complaint tolls the running of the statute of limitations.

15-1283 CRAWFORD, MILTON RAY
APPELLANT'S BRAZOS

01/27/16
FAILURE TO COMPLY
WITH REGISTRATION
REQUIREMENTS

Is TEX. CRIM. PROC. CODE art. 62.102(c) the exclusive enhancement of punishment provision for an offender who repeatedly or habitually fails to register as a sex offender?

15-1317 ZUNIGA, MARY
APPELLANT'S NUECES

01/27/16
TAMPERING WITH
PHYSICAL EVIDENCE

Whether the addition of the term "an unknown substance" is sufficient so as to apprise a defendant of what "thing" was considered "evidence" alleged to have been altered, destroyed or concealed?

15-1337 MARTINEZ, ROGER ANTHONY
COURT'S OWN MOTION VICTORIA

02/24/16
POSSESSION OF CONTROLLED
SUBSTANCE IN CORRECTIONAL
FACILITY; POSSESSION OF
CONTROLLED SUBSTANCE

Did the court of appeals err in its assessment of probable cause for a warrantless arrest pursuant to Texas Code of Criminal Procedure article 14.01?

15-1358 BAUMGART, ERIC L.
15-1359
15-1360
15-1361
APPELLANT'S HARRIS

03/09/16
VIOLATIONS OF PRIVATE
SECURITY ACT (5 CTS)

Did the court of appeals err in its application of Penal Code § 2.02?

15-1362 RUIZ, JOSE 03/02/16
STATE'S GONZALES DRIVING WHILE INTOXICATED

1. Is it unreasonable under the Fourth Amendment for an officer to rely on a driver's implied consent to a blood draw when the driver was involved in an accident, there is probable cause to believe he is intoxicated, and where the driver's own unconsciousness prevents the officer from effectively obtaining the driver's actual consent?
2. Were there sufficient exigent circumstances to justify the warrantless blood draw where (1) the officers were occupied with the accident investigation, (2) the defendant had fled the scene and remained unidentified for some time, and (3) where there were few officers or magistrates on hand to expeditiously obtain a warrant?

15-1369 FEBUS, ALBERT JUNIOR 02/03/16
APPELLANT'S HARRIS FAILURE TO REGISTER
AS SEX OFFENDER

The evidence is insufficient to support the conviction for the felony offense of failure to comply with sex offender registration requirements since the evidence conclusively establishes a reasonable doubt as to whether appellant intentionally or knowingly failed to comply with the Texas Sex Offender Registration Program, as charged in the indictment. The Court of Appeals reliance on Robinson v. State, No. PD-0421-14, 2015 WL 4068109 (Tex. Crim. App. July 1, 2015) is in error since the indictment required the State to prove, beyond a reasonable doubt, that appellant intentionally or knowingly failed to provide his anticipated move date and new address.

15-1391 RODRIGUEZ, MIKENZIE RENEE 02/24/16
STATE'S BROWN POSSESSION OF CONTROLLED
SUBSTANCE

1. Should a court of appeals consider all of the totality of the circumstances, including (a) who initially searched a dorm room, (b) whether law enforcement had to conduct any additional search beyond a search conducted by university officials, and (c) whether a student consented to university officials searching her room, when determining whether the Fourth Amendment was implicated by law enforcement's actions in entering a dorm room?
2. Should a university's duty to provide a safe environment, with an atmosphere conducive to the educational process, and the minimal intrusion by law enforcement be balanced against a college student's Fourth Amendment rights when determining the reasonableness of a dorm room search?
3. The Court of Appeals erred in categorically ruling that the plain view doctrine did not apply because university administrators cannot have actual or apparent authority to consent to law enforcement's entry into a dormitory room.

15-1409 ASBERRY, DAMON LAVELLE 03/09/16
APPELLANT'S McLENNAN MURDER

The Court of Appeals erred in holding it could not consider the trial Court record when reviewing the Court's findings in a Chapter 64 proceeding, where the record was not formally introduced into evidence at the hearing.

15-1453 BULLOCK, RICHARD HENRY 03/02/16
APPELLANT'S HARRIS THEFT

Where the evidence may support a conviction either for theft or the lesser-included offense of attempted theft, did the trial court err in denying Appellant's request for an instruction on the lesser-included offense?

15-1455 ROY, KELVIN LEE 02/24/16
APPELLANT'S ORANGE MURDER

The Court of Appeals erred in holding that the trial court properly denied petitioner's request for an instruction on the lesser-included offense of manslaughter.

15-1480 BYRAM, CAMERON 03/02/16
STATE'S TARRANT DRIVING WHILE INTOXICATED
W/OPEN CONTAINER

1. Whether the Court of Appeals gave proper deference to the trial court's determination of factual issues and application-of-law-to-fact issues that turn on credibility or demeanor?
2. Whether the Court of Appeals properly determined that the police officer's stop did not qualify under the community caretaking exception to the Fourth Amendment's warrant requirement?
3. Whether the Court of Appeals properly determined that the police officer lacked reasonable suspicion to stop the appellant's vehicle?

15-1484
STATE'S

DEEN, PHILLIP DEVON
TAYLOR

03/02/16
POSSESSION OF CONTROLLED
SUBSTANCE

1. Appellee should be estopped from claiming the conviction used to enhance his punishment is void when he pleaded true to the enhancement paragraph at trial.
2. If Appellee is not estopped by his plea of true from arguing on appeal that his prior conviction is void, his case should be remanded to the trial court for a factual determination on that issue.

15-1544
APPELLANT'S

LARUE, JOE EDWARD
JEFFERSON

04/13/16
CAPITAL MURDER

The Court of Appeals erred in failing to properly review the evidence and determine whether there was at least a 51% chance that appellant would not have been convicted if exculpatory results had been available during trial.

15-1549
STATE'S

COPELAND, SHIRLEY
VICTORIA

02/24/16
POSSESSION OF DANGEROUS
DRUG

1. Did the Court of Appeals commit reversible error by holding that the State procedurally defaulted on an issue that both the trial court and the Court of Appeals treated as a non-case dispositive issue when the case was first up for appeal?
2. Did the Court of Appeals fail to properly perform the review it was instructed to conduct by the Court of Criminal Appeals?

15-1566
APPELLANT'S

KNELSEN, ANNA
EL PASO

03/02/16
POSSESSION OF MARIJUANA

1. By ruling that Anna Knelsen's sworn writ allegations did not constitute a sufficient basis for vacating her conviction, even though the record conclusively establishes that her guilty plea was not knowingly and voluntarily made and that it resulted from ineffective assistance of counsel, the court of appeals has rendered a decision which conflicts with applicable decisions of the Court of Criminal Appeals and U.S. Supreme Court.

15-1596
APPELLANT'S

WHITE, WILLIAM DEWAYNE
FANNIN

03/23/16
DELIVER OF CONTROLLED
SUBSTANCE IN A DRUG FREE
ZONE

Does Health and Safety Code section 481.134(d) require proof of a culpable mental state to support a jury finding at trial that an offense was committed in a drug-free zone?

15-1639
APPELLANT'S

SHIMKO, JOSEPH TIMOTHY
TRAVIS

04/13/16
DRIVING WHILE INTOXICATED

When a police officer signals for a person to stop and that person would commit a crime by failing to obey the officer's command, would a reasonable person believe that he is free to leave?

15-1641
STATE'S

McCLINTOCK, BRADLEY RAY
HARRIS

04/27/16
POSSESSION OF CONTROLLED
SUBSTANCE

1. Does the United States Supreme Court's exception to the exclusionary rule, held under *Davis v. United States*, 131 S.Ct. 2419 (2001), apply to Texas' exclusionary rule?

2. If the United States Supreme Court's *Davis* exception to the exclusionary rule, or at least the purpose behind it, applies to Texas' exclusionary rule, the First Court of Appeals erred in excluding evidence obtained legally under binding authority at the time the search warrant was issued.

15-1648	ARTEAGA, ROBERT MICHAEL	04/27/16
15-1649		
APPELLANT'S	BURNET	SEXUAL ASSAULT (23 CTS)
		POSSESSION OF CHILD
		PORNOGRAPHY (17 CTS)

When a statute, Sec. 22.001(f), Tex. Penal Code Ann. (2011)(sexual assault), creates an element of the offense by citing specifically to another penal statute, Sec. 25.01, Tex. Penal Code Ann. (2001) (bigamy), is it proper to ignore the cited statute and permit conviction based on wholly unrelated non-penal statute, i.e., Sec. 6.201, Texas Family Code (2014) (consanguinity)?

15-1652	CORTEZ, JOSE LUIS	05/18/16
STATE'S	POTTER	POSSESSION OF CONTROLLED
		SUBSTANCE

1. Where does the improved shoulder of a highway begin: on the inside edge of the "fog line," the outside edge, or somewhere in between?
2. Given the lack of controlling precedent, was it objectively reasonable under *Heien v. North Carolina*, 135 S. Ct. 530 (2014), for a law enforcement officer to believe that the improved shoulder begins where the roadway appears to end?

15-1661	RITZ, ROBERT FRANCIS	04/27/16
APPELLANT'S	HAYS	CONTINUOUS TRAFFICKING
		OF PERSONS

1. The court of appeals erred in finding that the evidence was sufficient to prove that petitioner "trafficked" the alleged victim as intended by the statute.
2. The court of appeals erred in finding that the application of the plain language of V.T.C.A. Penal Code, Sec. 20A.01(4) did not lead to an absurd consequence that the legislature could not have intended.

15-1671	PENRIGHT, CARLTON CHARLES	04/27/16
APPELLANT'S	HARRIS	SEXUAL ASSAULT

The Court of Appeals' decision that the consolidated court cost was constitutional failed to explain how the comprehensive rehabilitation fee is a legitimate criminal justice purpose.

15-1682	PARKER, DARRELL WAYNE	05/04/16
APPELLANT'S	BELL	CAPITAL MURDER

Does transferred intent in a multiple (capital) murder situation preclude a requested lesser-included instruction on manslaughter where the defendant asserts (and there is affirmative evidence supporting the assertion) that he did not intend to kill one or more of the victims? *See Cavazos v. State*, 382 S.W.3d 377 (Tex.Crim.App. 2012).

16-0061	O'BRIEN, KELVIN LYNN	05/04/16
APPELLANT'S	HARRIS	ENGAGING IN ORGANIZED
		CRIMINAL ACTIVITY

1. Whether the court of appeals erred in holding that unanimity is not required with respect to the enumerated offenses of theft and money laundering in an engaging in organized criminal activity by commission jury charge. (CR at 868-872; 21 RR at 117-120; 29 RR at 45-46).

16-0170	SALINAS, ORLANDO	05/25/16
APPELLANT'S	HARRIS	INJURY TO AN ELDERLY
		PERSON

1. The Fourteenth Court of Appeals' erred when it held that a court cost for "comprehensive rehabilitation" is expended for a "legitimate criminal justice purpose." The Court of Appeals failed to explain how this "relates to the administration of our criminal justice system." Is this opinion in conflict with *Peraza v. State*?
2. The Fourteenth Court of Appeals' erred when it held that a court cost labeled "abused children's counseling" is a constitutional court cost. The Court of Appeals failed to explain how this cost is "expended" for a "legitimate criminal justice purpose" when the opinion states the money is not statutorily utilized for that purpose. Is this opinion in conflict with *Peraza v. State*?

16-0171 **GREEN, CLIFFORD WAYNE** **05/04/16**
STATE'S **McCLENNAN** **AGGRAVATED SEXUAL ASSAULT**

2. The court of appeals' analysis of ineffective assistance of counsel was tainted by its improper reframing of appellant's issue.

16-0196 **LAKE, RODNEY DIMITRIUS aka** **05/18/16**
STATE'S **LAKE, RODNEY D.** **TARRANT** **SEXUAL ASSAULT**

1. The court of appeals erred in treating the trial court's refusal to allow final argument before revoking Appellant's community supervision as structural error immune from a harmless-error analysis.
2. The court of appeals' treatment of the trial court's refusal to allow final argument before revoking Appellant's community supervision as structural error immune from a harmless-error analysis is contrary to decisions of the United States Supreme Court and this Court defining what constitutes structural error.

16-0197 **GUTIERREZ, RENE** **05/25/16**
STATE'S **NUECES** **AGGRAVATED ASSAULT**
HARASSMENT OF PUBLIC
SERVANT

- Did the court of appeals properly apply either prong of *Strickland v. Washington* when it affirmed a new trial based on defense counsel's allegedly deficient advice to proceed with an 11-member jury?

16-0208 **BOWMAN, RICHARD MARK** **04/06/16**
STATE'S **HARRIS** **DRIVING WHILE INTOXICATED**

1. Upon analyzing the applicability of the equitable doctrine of laches, this Court has established a framework for review under the totality of the circumstances. The court of appeals erred when it did not faithfully apply this framework and, instead, diminished the importance of faded memories and wholly failed to consider appellant's reason for delaying more than seven years in bringing his claim.
2. The court of appeals granted relief for ineffective assistance of counsel because the trial attorney did not investigate the specific stats regarding the detaining officer's overtime pay for impeachment purposes, which it considered a local defense custom. The court of appeals failed to give proper deference to the trial court by ignoring evidence that investigation of this specific officer was not so pervasive as to be a professional standard, failed to actually consider whether such evidence would be admissible, and overlooked that its argument against prejudice on the State's laches claim should preclude prejudice in appellant's ineffective assistance of counsel claim.

16-0215 **QUEEMAN, ROBERT ALAN** **05/25/16**
STATE'S **KINNEY** **CRIMINALLY NEGLIGENT**
HOMICIDE

1. Is failing to maintain a safe speed and keep a proper distance the sort of "unexplained failure" that this Court suggested in *Tello v. State*, 180 S.W.3d 150 (Tex. Crim. App. 2005), would be unworthy of criminal sanction?
2. Did the court of appeals ignore basic rules of sufficiency review when it disregarded evidence that supported the verdict and drew inferences contrary to those presumably drawn by the jury?

16-0227 **GAMINO, CESAR ALEJANDRO** **05/25/16**
STATE'S **TARRANT** **AGGRAVATED ASSAULT**

1. Did the court of appeals err in finding that Respondent admitted to threatening his victim, and thereby admitted to committing aggravated assault with a deadly weapon, by testifying he held a gun at his side with the barrel pointed at the ground?

2. Did the court of appeals err by relying on law not applicable to this case in order to reach its holding?
3. Did the court of appeals err when it cited a case as support of an application of law that the case actually held to be error?

16-0295
STATE'S

THOMAS, CODY LANG
HOPKINS

05/25/16
THEFT

What is the proper remedy when the defendant and the State "charge bargain" for an open plea of guilty to a lesser-included offense and the trial judge imposes an illegal sentence?